

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
NO. 5:21-CR-434-M-1

UNITED STATES OF AMERICA

v.

CHRISTOPHER LAMAR BAKER

MOTION TO DISMISS
FOURTH SUPERSEDING INDICTMENT

NOW COMES Christopher Baker (“the Defendant”), by and through the undersigned counsel, and moves this Court to DISMISS the Fourth Superseding Indictment pursuant to Rule 48(b)(1) of the Federal Rules of Criminal Procedure.

PROCEDURAL HISTORY

Mr. Baker was arrested on or about November 17, 2021 on a criminal complaint and was indicted on December 7, 2021 in an initial Indictment. A First Superseding Indictment was followed by a Second Superseding Indictment returned on April 6, 2022. Mr. Baker pled not guilty to the seventeen (17) counts in the Second Superseding Indictment on July 26, 2022. The Defendant sought a jury trial consistent with his Speedy Trial Act rights. On July 26, 2022, the Court set trial for September 12, 2022 and a pre-trial hearings date of September 7, 2022. On August 18, 2022, the Government sought and obtained a Third Superseding Indictment that added a Count 18 “Money Laundering” charge. Mr. Baker was arraigned and pled not guilty on September 7, 2022. Unbeknownst to Defense Counsel, the Government obtained a Fourth Superseding indictment on September 7, 2022 with, according to Grand Jury transcripts, two witnesses appearing in Raleigh earlier in the morning.

The undersigned was noticed with at 4:22 PM Thursday, September 7, 2022.

ARGUMENT

Federal Rule of Criminal Procedure 48(b)(1) provides that this Court “may dismiss an indictment, information, or complaint if unnecessary delay occurs in ... presenting a charge to a grand jury [.]” The Advisory Committee Notes to Rule 48 explain that Rule 48 is not limited to Sixth Amendment or Speedy Trial Act concerns. The Notes explain that the Committee

considered the relationship between Rule 48(b) and the Speedy Trial Act. See 18 U.S.C. §§3161, et seq. Rule 48(b), of course, operates independently from the Act. See, e.g., United States v. Goodson, 204 F.3d 508 (4th Cir. 2000) (noting purpose of Rule 48(b)); United States v. Carlone, 666 F.2d 1112, 1116 (7th Cir. 1981) (suggesting that Rule 48(b) could provide an alternate basis in an extreme case to dismiss an indictment, without reference to Speedy Trial Act); United States v. Balochi, 527 F.2d 562, 563–64 (4th Cir. 1976) (per curiam) (Rule 48(b) is broader in compass). In re-promulgating Rule 48(b), the Committee intends no change in the relationship between that rule and the Speedy Trial Act.

Fed. R. Crim. P. 48, Advisory Committee Notes (2002 amendment); see also United States v. Judge, 425 F. Supp. 499, 503–05 (D. Mass. 1976) (granting Rule 48(b) motion to dismiss) (district court’s inherent power to dismiss under Rule 48(b) is “not limited to those situations in which the Sixth Amendment right to a speedy trial has been violated [.]” rather, the rule “is a restatement of the inherent power of the court to dismiss a case for want of prosecution.”).

Here, the Rule 48(b) standard has been met because there has been “unnecessary delay.” The Court scheduled this case for trial more than 40 days ago. In the meantime, the Government sought not one, but two superseding indictments. The final indictment was revealed to Defense counsel with one business day to go before the start of the trial.

To the extent Count Five has been redrafted to more align with facts the Government has known, the Defendant objects and asks the Court to Dismiss the Fourth Superseding Indictment and allow the trial to proceed on the Third Superseding Indictment.

This the 10th day of September 2022.

THE CHETSON FIRM, PLLC

/s/ Damon Chetson

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was served upon all parties to this action as identified in the Notice of Electronic Filing generated by this filing by electronically filing the foregoing with the Clerk of Court using the CM/ECF system.

Date: September 10, 2022.

/s/ Damon Chetson
Damon J. Chetson